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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,433	07/03/2003	Leonel Yanez Martinez	MX/JFC-Serv-001	5111
7590 Carmen Pili Ekstrom 727 Sunshine Dr. Los Altos, CA 94024	08/26/2009		EXAMINER MAYO III, WILLIAM H	
			ART UNIT 2831	PAPER NUMBER
			MAIL DATE 08/26/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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In re Application of: :
Martinez et al. : DECISION ON PETITION
Serial No.: 10/613,433 :
Filed: July 3, 2003 :
Attorney Docket No.: MX/JFC-Serv-001 :
:

This is a decision on the petition under 37 C.F.R. § 1.144, filed on August 12, 2009, requesting withdrawal of the restriction requirement first asserted on December 16, 2004 and made final on May 19, 2005.

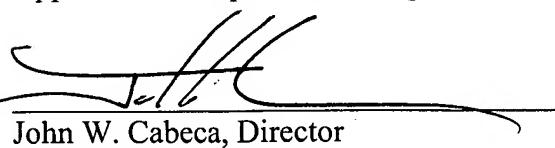
The petition is DENIED.

Petitioner asserts that, while the examiner determines that the inventions are distinct but are related as process of making and product made, the inventions are related as combination/subcombination and a two-way distinctness must be shown for a proper restriction. It is also asserted that the examiner fails to state whether the process claimed defines a contribution over the prior art for a lack of unity rejection pursuant to 37 CFR 1.475.

It is noted that the arguments presented in this petition are the same as the arguments made in an earlier petition filed December 21, 2005, which petition was denied in a decision of April 17, 2007. Petitioner does not provide any new reasoning to support the assertion that the inventions are related as combination/subcombination. Pursuant to M.P.E.P. § 806.05(a), the two claimed inventions cannot be characterized as being related as combination/subcombination. The reliance on the unity of invention practice for international applications in their U.S. national stage was found not persuasive but no further argument is being presented in the instant petition. Accordingly, the petition is hereby DENIED. The restriction requirement made final on May 19, 2005 is again sustained.

Telephone inquiries should be directed to Diego Gutierrez at 571-272-2245.

The above identified application is being forwarded to the examiner for consideration of the Pre-Appeal Brief Request filed August 12, 2009.



John W. Cabeca, Director
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